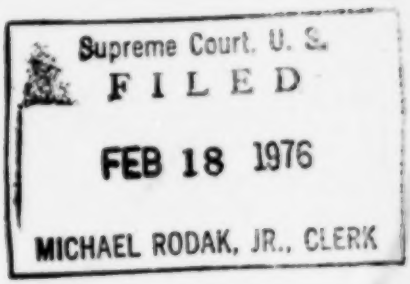
No. 75-1176

IN THE SUPREME COURT OF THE UNITED STATES



JOSEPH M. KADANS,

Appellant

VS.

STATE BAR OF NEVADA

Appellee

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF NEVADA

JURISDICTIONAL STATEMENT

Attorney: Joseph M. Kadans, Esq.
3519 Thom Blvd.,
Las Vegas, Nevada 89106
In pro se

IN THE SUPREME COURT OF THE UNITED STATES

JOSEPH M. KADANS, Appellant	)	
vs.	)	No. _____
STATE BAR OF NEVADA Appellee	)	

JURISDICTIONAL STATEMENT

NOW COMES JOSEPH M. KADANS, a member of the Bar of the Supreme Court of the United States and files this jurisdictional statement on behalf of himself as Appellant in pro se in the above entitled cause.

The following information is provided as set forth in Rule 15 of the Supreme Court Rules:

1. Reference to opinion below. There is one opinion of the Court below, the Nevada Supreme Court, appended hereto as Exhibit A.

2. Jurisdiction. Nature of proceeding and relevant statute. This is an appeal from the Nevada Supreme Court pertaining to due process of law, the Commerce Clause of the U. S. Constitution and the anti-trust laws. In addition to the 14th Amendment, relating to the prohibition against denial of due process of law, this case also involves denial of equal protection of the laws, another prohibition of the 14th Amendment. The Commerce Clause is contained in Art. I, sec. 8 of the U. S. Constitution. The anti-trust laws are involved and the relative statute under the Commerce Clause is the Sherman Anti-Trust Act, 15 USC sec. 1 et seq.

2(a) Jurisdiction. Date of judgment, appeal filing. The judgment denying the Petition filed with the Nevada Supreme Court in an original proceeding in

that Court was filed on October 23, 1975. An order was entered by that Court on December 5, 1975, denying leave to file a motion for reconsideration. The Notice of Appeal to the United States Supreme Court was filed on January 23, 1976 with the Nevada Supreme Court.

2(b) Jurisdiction. Statutory provision. The statutory provision believed to confer jurisdiction on the United States Supreme Court is:

"28 United States Code 1257(2). By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

2(c) Cases believed to sustain the jurisdiction.

A. As to due process and equal protection of the laws:

> Vlandis v. Kline, 412 U.S. 441, 37 L ed 2d, 63, wherein it was held that it was a violation of due process of law for a state to establish a permanent and irrebutable presumption. This case pertained to residential requirements of a state university but the Chief Justice of the United States (in his dissent) evaluated the decision as being applicable to situations involving the rights of graduates of small law schools and medical schools to demonstate and prove that they acquired sufficient skills to practice their professions.

Cleveland Board of Education v. LaFleur, 414 U.S. 632, 39 L ed 2d 52, wherein it was held that the Vlandis Case established a principle that required consideration of individual capacity and that a flat rule that made no provisions for individuals was unconstitutional. This case pertained to the ability of a pregnant school teacher to perform her school duties.

Turner v. Dept. of Employment Security,

96 S. Ct. 249, No. 74-1312. In this case, continuing the rule stated in the Vlandis Case, supra and the Cleveland Board of Education Case, supra, the U. S. Supreme Court reiterated the rule that the Constitution requires a more individualized approach and held that the 14th Amendment requires that states must achieve legitimate state ends through more individualized means when basic human rights are at stake.

> F. S. Royster Guano Co. v. Virginia, 253 U.S. 412. This case established that there must be some reasonable relation "to the object of the legislation, so that all persons similarly circumstanced shall be treated alike" under the Equal Protection Clause. Where a State, in unpublished, unpublicized cases, admits certain persons having official State connections, although otherwise unqualified, to the practice of law and denies even a qualification examination to a highly qualified person, but without State or political connections, this is clearly unequal treatment and a violation of the 14th Amendment.

Board of Regents v. Roth, 408 U.S. 564. This case refers to the "right of the individual to contract, to engage in any of the common occupations of life * * *." In the case at bar, Appellant has been denied the opportunity to continue in his occupation, contrary to due process, the equal protection clause, the commerce clause and anti-trust laws.

Katzenbach v. McClung, 379 U.S. 294 refers to obstruction of interstate commerce and the deterrence to the establishment of a service in other areas of the United States when State laws prevent travel from one state to another. In the case at bar, Appellant, a lawyer practicing law in Michigan moved to Nevada and was there denied the right to continue in his profession, thereby depriving him of his means to earn a livelihood and

also interfering with his right to travel in interstate commerce and to establish his office in Nevada and to service the people of that State.

United States v. Employing Plasters Assn., 347 U.S. 186, 98 L ed 618. Here the Court expressed indignation that a local group of people were able "to dictate who could and who could not buy plastering materials that had to reach Illinois through interstate trade if they reached there at all." In the case at bar, the Appellee, the State Bar of Nevada, with authority to propose rules, constituting State law, determining which lawyers from other States could and who could not move to Nevada to practice law, conspired with the members of the Nevada Supreme Court, who have the authority to adopt the recommended rules of the State Bar of Nevada, to adopt rules that enables them, to this day, to adopt rules that deny to lawyers from other States the right to travel to Nevada and to practice law.

Burke v. Ford, 389 U.S. 320, 19 L ed 2d 554 established that any intrastate conspiracy that would invariably reduce competition, the obvious purpose of the present conspiratorial arrangement in Nevada, would cause a price increase. By denying to skilled and experienced lawyers of other states the right to travel to Nevada and to establish offices for the practice of law, this allows the existing profession in Nevada to increase prices, to the detriment of the people of the State of Nevada.

2(d) Jurisdiction. The State law involved.

Nevada Supreme Court Rule 51:
"An applicant for examination for a license to practice as an attorney and counselor at law in this state shall: * * *
4. Have received a degree of bachelor of laws, or an equivalent law degree, from a law school approved by the committee on

legal education and admissions to the bar of the American Bar Association, and shall present evidence of the same."

Nevada Supreme Court Rule 72.5:
"1. Notwithstanding any other provisions of these rules, upon his compliance with the requirements of this rule the supreme court may admit an individual to practice law in this state who is an instructor, teacher, professor or dean of the National College of State Trial Judges at the University of Nevada or of any law school that may be established as an integral part of the University of Nevada and approved by the committee on legal education and admissions to the bar of the American Bar Association."

3. Questions presented by the appeal:

A. Appellant graduated from the University of Baltimore School of Law on June 14, 1943. He passed the Maryland bar examination and was admitted to that bar later in the same year. On Dec. 10, 1946, he was admitted to the bar of the Supreme Court of the United States. In 1952, after moving to Michigan, he was admitted to the Michigan bar. In 1962, after moving to Nevada and although having practiced law for almost 20 years he was prevented from earning his livelihood as a lawyer in Nevada by a Supreme Court Rule that required graduation from a law school approved by a committee of the American Bar Association. The University of Baltimore is now approved by the ABA committee but was not so approved by the committee in 1946 but, in 1946, it was approved by the State of Maryland as an approved law school. The issue presented is whether or not a State law, as represented by a Supreme Court Rule, is valid and not in conflict with the 14th Amendment prohibition against deprivation of due process of law and equal protection of the law in preventing a highly skilled and competent lawyer of many years

of successful legal counseling, trial practice, law writing and law school lecturing from earning a livelihood in his chosen profession.

B. Assuming the fact situation in Question A above, does the Nevada Supreme Court rule requiring all applicants for admission to the Nevada bar to have graduated from a law school approved, at the time of graduation, by a committee of the American Bar Association, regardless of the time of graduation, regardless of the years of practice and regardless of the eminence of the applicant in his standing in his profession constitute such a permanent and irrebutable presumption so overbroad in scope as to constitute the absence of due process of law?

C. Assuming the fact situation in Question A above and assuming further that the Supreme Court, after denying to Appellant the right to take the State bar examination, in an unpublished and unpublicized proceeding, admitted to the State bar a Nevada Highway Department attorney who had not graduated from an ABA approved law school and later, after again denying to Appellant the right to take the Nevada bar examination, admitted to the examination and to the practice of law in Nevada another individual who had never attended any United States law school whatsoever, also in an unpublished and unpublicized proceeding, but who was represented before the Supreme Court by a Nevada attorney who at that time was also the Lt. Governor of the State of Nevada, do these actions by the Supreme Court constitute deprivation of equal protection of the law contrary to the 14th Amendment?

D. Assuming the fact situation in Question A above, was the denial to Appellant of the right to take the bar examination a violation by the State of the Commerce Clause of the United States Constitution, preventing Appellant from free travel in interstate commerce?

E. Assuming the fact situation as stated in Question A, was the denial to Appellant of the right to demonstrate his qualifications to continue in the practice of his profession a violation of the anti-trust laws of the United States as to tend to create a monopoly and to increase the cost of legal services, contrary to the Sherman Anti-Trust Act 15 USC sec. 1, et seq. or the Clayton Act, 15 U.S.C. sec. 15, et seq.

4. Concise statement of the case.

Appellant attended a night law school from 1940 to 1943 while employed as a Safety Inspector and highway accident investigator by the U. S. Interstate Commerce Commission. He graduated from the University of Baltimore on June 14, 1943, a law school approved by the State Bar of Maryland and the Court of Appeals of the State of Maryland, took the bar examination and passed it and was admitted to the Maryland Bar the first time and admitted to practice in Maryland later in the year. The following year, 1944, he resigned from U. S. Government Service to devote full time to the practice of law.

Later, after moving to Michigan, Appellant was admitted to the Michigan Bar, on Motion, without examination, subject only to a character check. Admission took place in January, 1952. Appellant practiced law in Michigan until March, 1962, when he moved to Nevada. His first application for admission to the Nevada bar took place in 1963 but admission was denied solely on the ground of not having graduated from a law school approved by a committee of the American Bar Association.

Several efforts to seek permission to continue in his profession failed and recently, after the Vlandis v. Kline decision, supra Appellant determined to try again.

An original Petition was filed with the Nevada Supreme Court, pointing to the Vlandis Case. A copy of the Petition is part of the Record.

Appellant respectfully urged the Court to modify the Supreme Court rules "to conform with the decision in the aforementioned case."

Appellant suggested that inview of the special circumstances in his own case, as an experienced law practitioner with many years of honorable practice, as well as a law writer and lecturer, having written "Principles of Maritime Law" a book on the recommended list of admiralty textbooks for law students of the Association of American Law Schools and having lectured for many years on various legal subjects, including maritime law, Federal procedure, insurance law and several other subjects, the Supreme Court might wish to modify Supreme Court Rule 72.5, referred to in 2(d) above, so as to allow Appellant, who is presently Dean of the Institute of Advanced Law Study and a member of the Association of Continuing Legal Education Administrators, to be admitted to the Nevada Bar on motion, similar to the admission on motion, provided for under Rule 72.5, for the Dean of the National College of State Trial Judges.

Alternatively, Appellant suggested that the Supreme Court, as the State Agency empowered by statute to make regulations governing admission to the Bar, allow Appellant to take "the next scheduled Nevada bar examination."

Appellant pointed out in his Petition to the Nevada Supreme Court that "he has been deprived unlawfully of his rights under the Nevada and United States Constitutions with respect to due process of law and equal justice under the law."

Appellant further pointed out in his Petition that "he has been the victim of invidious discrimination and that he has been denied the minimum standards of due process, now made clear by the decision of Vlandis v. Kline, supra."

The Nevada Supreme Court summarily dismissed the Petition, ruling that the matter of change of the rules was not a matter for litigation. The Court was silent on the question of applicability of the Vlandis Case, supra, to the case at bar.

Another effort was made in a Motion for Reconsideration, wherein violations of Federal laws were set forth. However, the Nevada Supreme Court summarily denied leave to file the reconsideration motion, which had been attached to the Motion for Leave to File the Motion for Reconsideration.

5. Substantiality of Federal questions.

The Federal questions are of considerable substance, being of great concern to many men and women engaged in trades and professions fearful of traveling from one state to another because of strict and arbitrary regulations which, as in the case at bar, prevent even the most highly skilled individuals, from continuing in the work in which a livelihood is earned, thus interfering with perhaps the most basic and most important right of mankind.

There are times when State employees in charge of enforcement of onerous State laws resent intervention on the part of Federal officers who enact Federal legislation or enforce Federal constitutional requirements. Comity between the States and the Federal Government requires that such instances be kept to a minimum. However, no matter how clear the principle, some States will not yield until and unless the United States Supreme Court specifically rules in connection with the particular condition in such States.

Consideration of the case of Zucht v. King, 260 U.S. 174 indicates that the case at bar is very similar to the situation in that case. Here, as in Zucht, there is a question of the validity of the Nevada law, as stated in a rule of the Nevada Supreme Court. In Zucht, this Court held that when a question concerned the validity of the State law, it was a proper question for consideration by the Court.

Just as in Zucht it was ruled that where equal protection of the laws are denied a substantial constitutional question is involved so therefore is a sub-

stantial Federal question involved in the case at bar because it is clear that in the case at bar there has been a denial of equal protection of the laws.

The clear denial of constitutional rights to even one person should be enough for remedial action by this Honorable Court. The Court has acted on behalf of single individuals in like circumstances on many occasions. However, in the case at bar, the decision will have great significance for millions of men and women prevented from moving about from one state to another for fear of selfish and monopolistic laws of some states that seek to keep out of the state individuals who may constitute competition in some vocation or profession. Such rules or laws are simply the manifestations of the old medieval labor guild laws of ancient days that created so much misery in those days. Only Justices of the United States Supreme Court or other Federal judges serving for the duration of life seem to have the courage to strike down the bad laws that plague our society.

Respectfully submitted,

JOSEPH M. KADANS
Attorney At Law - in pro se
3519 Thom Boulevard
Las Vegas, Nevada 89106

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, as a member of the Bar of the Supreme Court of the United States that 3 copies of this Jurisdictional Statement were mailed on the 5 day of February, 1976 to:

Samuel S. Lionel, Esq.
Atty., State Bar of Nevada
302 E. Carson-Suite 800
Las Vegas, Nev. 89101

Robert List, Esq.
Nevada Atty. Gen.
Sup. Ct. Bldg.
Carson City, Nev. 89701

JOSEPH M. KADANS

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH M. KADANS, Petitioner, vs. STATE BAR OF NEVADA, Respondent.	)	No. 8203 (Filed Oct. 23, 1975 C. R. Davenport Clerk, Supreme Court)

ORDER DISMISSING PETITION

Joseph M. Kadans has filed an in pro per petition against the State Bar of Nevada, wherein he suggests that the Supreme Court should amend a particular Supreme Court Rule.

The State Bar has moved to dismiss the petition, pointing out that it neither contains a cognizable nor justiciable issue or allegation; and, Kadans, in an instrument filed in response to the motion to dismiss, concedes "... that this is not a matter for litigation."

Accordingly, we grant respondent's motion and

ORDER this petition dismissed.

(signed) C. J.
Gunderson

(signed) J.
Batjer

(signed) J.
Zenoff

(signed) J.
Mowbray

(signed) J.
Thompson

cc: Samuel S. Lionel, Esq.
Maurice J. Sullivan, Executive Secretary, Nevada State Bar
Joseph M. Kadans

EXHIBIT A

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH M. KADANS,
Petitioner,
vs.
STATE BAR OF NEVADA,
Respondent.

No. 8203

(Filed Jan. 23, 1976)

NOTICE OF APPEAL
TO THE SUPREME COURT OF THE UNITED STATES

1. Notice is hereby given that Joseph M. Kadans, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Nevada dismissing the petition filed in the above entitled cause, filed on Oct. 23, 1975. This appeal is taken pursuant to 28 U.S.C. 1257(2).

2. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

A. Petition filed May 8, 1975.
B. Motion to Dismiss and Points and Authorities in Support of Motion to Dismiss.
C. Points and Authorities of Petitioner in response to Motion to Dismiss.
D. Order dismissing Petition, filed Oct. 23, 1975.

3. The following questions are presented by this appeal:

A. Does the case of Vlandis v. Kline, 412 U.S. 441, 37 L ed 2d 63 (1973), declaring as unconstitutional the laws of a State creating permanent and irrebutable presumptions apply to the case of a lawyer long in practice in one State of the United States who moves to another State and in seeking to continue in his profession is denied the right to earn his livelihood in his profession on the theory that his law school, although accredited by the State of his residence, Maryland, was not, at the time of his graduation, in 1943, accredited by the American Bar Association

although it has since been accredited by this Association?

B. Was the Chief Justice of the United States in error when he stated in his dissenting opinion that thereafter graduates of law schools or medical schools must be allowed to prove their qualifications and that in view of the decision aforementioned a State may not forever bar them from practicing the professions they have learned in school, without any opportunity to prove their skills, unless a certain named association of lawyers or doctors have approved the law school or medical school?

C. May a State deprive an individual of his property right to earn a livelihood in his vocation, in which he has engaged for many years (for 20 years, in the case at bar) honorably and well, on the ground that his education many years ago, while preparing for his profession, does not meet present day standards of law school preparation, despite the fact that at the time of preparation, in the case at bar, the State in question had regulations not more stringent than existed in the State wherein he was preparing for his profession?

D. Is a lawyer with 20 years of experience in the practice of law properly denied admission to the State bar examination on the ground that he had not graduated from a law school approved by the American Bar Association to be denied the right to continue to earn his livelihood in his profession when the State licensing tribunal, during the same time interval, admits to the practice of law an individual who had never even attended any United States law school whatsoever, in a secret and confidential proceeding before the tribunal and in another confidential proceeding admitted a lawyer from another State who had not attended an ABA approved law school?

E. Does a State unconstitutionally violate the commerce clause in establishing an arbitrary and unreasonable standard for the licensing of a professional person who

who wishes to enter the State from another State to carry on the practice of law, hus interfering with interstate commerce?

F. Is it a violation of the anti-trust laws of the United States for the members of a profession in one State to establish arbitrary and unreasonable regulations having the effect of reducing competition from lawyers of other States who wish to move into the State with arbitrary and unreasonable standards?

G. Does a State properly exercise the police power of a State for the protection of the public when it establishes a rule barring a lawyer from taking the State bar examination, even though the lawyer, at the time of applying, had been practicing law in two other States, Maryland and Michigan and in addition to being a member of the bar in good standing in these States was also a member in good standing of the bar of the Supreme Court of the United States, the United States Courts of Appeal of the 4th and 6th Circuits, the Court of Appeals of the District of Columbia and who has since been recently admitted to the bar of the United States Court of Appeals of the Ninth Circuit and, in addition, is the author of Principles of Maritime Law, Federal Administrative and Court Procedure, The Law of International Trade, Elements of Insurance, Principles of Libel and Slander Law, Principles of Malpractice Law, Principles of Evidence Law, Principles of Environmental Law and who is now engaged in writing a law book entitled Principles of U. S. Supreme Court Practice?

JOSEPH M. KADANS
Attorney At Law
In pro se
3519 Thom Blvd.
Las Vegas, Nevada 89106

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Service of the within and receipt of a copy thereof is hereby admitted this ..... day of March, A.D. 1976.

Supreme Court, U. S.
FILED
MAR 15 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1975
No. 75-1176

JOSEPH M. KADANS,

Appellant,

vs.

STATE BAR OF NEVADA,

Appellee.

MOTION TO DISMISS.

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IN THE

Supreme Court of the United States

October Term, 1975
No. 75-1176

JOSEPH M. KADANS,

Appellant,

vs.

STATE BAR OF NEVADA,

Appellee.

MOTION TO DISMISS.

Appellee, pursuant to Rule 16 of the Rules of the Supreme Court, moves that the appeal from the Order Dismissing Petition of the Supreme Court of Nevada be dismissed on the ground that the questions presented have not been raised below or are so unsubstantial as not to warrant further argument.

Statement.

This is a direct appeal from an order of the Supreme Court of the State of Nevada dismissing a petition filed with such court seeking appellant's admission to practice law in Nevada under its Supreme Court Rule 72.5 "or under a slight modification of that Rule which the Nevada Supreme Court has authority to do" or alternatively an order permitting appellant to take the next scheduled bar examination (Petition below, pp. 5, 6).

Supreme Court Rule 72.5 authorizes the admission to practice in Nevada, under certain circumstances, of an instructor, professor or dean of the National College of State Trial Judges at the University of Nevada or of a law school that may be established as an integral part of the University of Nevada and approved by the appropriate committee of the American Bar Association (Jurisdictional Statement p. 5). Appellant did not challenge below the constitutionality of Rule 72.5.

Supreme Court Rule 51(6) requires an applicant seeking to take the Nevada Bar examination to be a graduate from a law school approved by the committee on legal education and admissions to the bar of the American Bar Association. Appellant did not graduate from a law school that was so accredited at the time he was graduated. In Point III of his Petition below appellant claimed that Rule 51(6) "needs to be modified to conform with" *Vlandis v. Kline*, 412 U.S. 441 (Petition below, p. 3). The rule itself does not appear to be challenged, except for the statement in Point IV, which is a threat to file a civil rights suit if relief is denied, where appellant states that "he has been denied the minimum standards of due process, now made clear by the decision of Vlandis v. Kline" (Petition below, p. 5).

In his Point III below, appellant contends that two persons were admitted to practice in Nevada who did not graduate from American Bar Association approved law schools and that "Thirteen years of denial of practice of one's occupation should be enough, especially when the denial was due to an unfortunate application of a law that is now clearly void and unconstitutional

both as to the State of Nevada and United States Constitutions as denying due process of the law and equal rights under the law" (Petition below, p. 4).

ARGUMENT.

Although the Jurisdictional Statement contends numerous questions are presented by the appeal such as a denial of appellant's right to travel and a violation of the Sherman Anti-Trust Act (Jurisdictional Statement pp. 6, 7) only matters shown in the Statement above were raised below. Questions now raised for the first time are of course not within this Court's appellate jurisdiction, 18 U.S.C. 1257(2).

In fact, no issue of the validity of any Nevada statute or rule was properly presented within the meaning of 18 U.S.C. 1257(2) to give this Court jurisdiction. The Petition filed in the Supreme Court of Nevada is most vague. No section of the United States Constitution or of a federal statute is cited. The only decision of this Court cited was *Vlandis v. Kline*, which appellant relied upon as warranting a modification of a Nevada Supreme Court Rule.

As held in *Oxley Stave Co. v. Butler County*, 166 U.S. 648, 655

> "the jurisdiction of this court to re-examine the final judgment of a state court cannot arise from mere inference, but only from averments so distinct and positive as to place it beyond question that the party bringing a case here from such court intended to assert a Federal right."

Because of the vagueness of the Petition below it is not surprising that the Nevada Supreme Court con-

strued it to be basically a request for modification of its rules dealing with admission to practice and not a matter for litigation.

Schware v. Board of Bar Examiners, 353 U.S. 232, 239, holds that a state can require high standards of qualification as a prerequisite to admission to practice. Nevada's requirement of graduation from an accredited law school is one of the Nevada standards of qualification. Nothing in *Vlandis v. Kline* affects Nevada's right to continue to require such qualification.

Conclusion.

The appeal should be dismissed.

SAMUEL S. LIONEL,
Attorney for Appellee.

Supreme Court, U. S.
FILED
MAR 26 1976
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975
No. 75-1176

JOSEPH M. KADANS,

Appellant,

vs.

STATE BAR OF NEVADA,

Appellee.

BRIEF IN OPPOSITION TO MOTION TO DISMISS

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Counsel for Appellant.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1975
No. 75-1176

JOSEPH M. KADANS,

Appellant,

VS.

STATE BAR OF NEVADA,

Appellee.

BRIEF IN OPPOSITION
TO MOTION TO DISMISS

This memorandum brief is filed merely for the convenience of the Court, answering the points raised by the Appellee in the Motion to Dismiss.

I - CONTENTION OF APPELLEE THAT FEDERAL QUESTIONS WERE NOT RAISED IN LOWER COURT.

The Appellee has moved for dismissal "on the ground that the questions presented have not been raised below * * *."

The 14th Amendment to the United States Constitution, prohibiting any State from depriving any person of life, liberty or property without due process of law and prohibiting the denial of equal protection of the laws has been mentioned in several places in the original Petition filed with the Nevada Supreme Court:

Page 1 of Petition: Par. 4 on Page 1 of the

Petition states:

> "4. Petitioner will set forth is belief that he has been deprived of both State and Federal rights and therefore Petitioner petitions this Honorable Court for a redress of his grievances."

P. 3 of the Petition, starting on Line 16, makes the specific charge that Nevada law(Supreme Court Rule 51(6), in combination with Supreme Court Rule 42(4)) is a violation of due process of law, stating as follows:

> "In the case of Vlandis v. Kline, decided June 11, 1973 and found in 412 U.S. 441, 93 S. Ct. 2230, 37 L Ed 2d 63, the United States Supreme Court held that it was a violation of due process of law for any State to establish a permanent irrebuttable presumption. In a dissenting opinion, Chief Justice Burger, who was joined in the dissent with Justice Rehnquist, stated that the effect of the decision was to nullify rules or laws of States that barred from admission to practice 'persons who do not graduate from accredited schools of law and medicine.'
>
> "The fault in the Nevada Supreme Court Rule is that, in effect, the Nevada rule creates a permanent irrebuttable presumption that Petitioner is not fit to practice law, despite the fact that Petitioner practiced law successfully for many years in both Maryland and Michigan since 1943. Obviously, the Nevada Rule needs to be modified to conform with the decision in the aforementioned case."

(Nevada Supreme Court Rule 42(4), referred to on Page 3 of the Petition, requires attorneys moving to Nevada from other State, to be examined and to make application "in the same manner as all other applicants.")

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P. 4 of Petition has this heading at the very top of the page:

"EQUALITY UNDER THE LAW"

The Nevada Supreme Court, as well as the Appellee could have made no mistake in associating this statement with the 14th Amendment, which refers to the equal protection of the laws.

Furthermore, Page 4 of the Petition, immediately following the aforecaption heading, complains that while denying to Appellant the right to take the Nevada Bar examination, the Nevada Supreme Court allowed other individuals, who has also failed to attend or to graduate from an ABA accredited law school, to take the Nevada bar examination and to be admitted to the Nevada Bar, a clear and obvious violation of the 14th Amendment.

From Page 4 of Petition:

> "Clarence A. Nelson, Jr., now a practicing attorney in Las Vegas, Nevada, did not graduate from an ABA-approved law school and was admitted to practice by the Nevada Supreme Court and Peter Burleigh, now a practicing attorney in Las Vegas, Nevada, also did not graduate from an ABA-approved law school. Neither the law school of Nelson nor the law school of Burleigh has ever been approved by the American Bar Association."

(These two admissions took place after the Appellant had first applied to take the Nevada bar examination in 1963.)

Page 4 of the Petition also points out that there has been an "unequal application of the law to Petitioner." This obviously a reference to the Federal right of the Petitioner (Appellant) under the 14th Amendment of the United States Constitution. (Line 22 of Page 4)

Furthermore, Lines 28 to 31 of Page 4 of the Petition again claim certain Federal rights as follows:

> " * * * tne denial was due to an unfortunate application of a law that is now clearly void and unconstitutional both as to the State of Nevada and United States Constitutions as denying due process of the law and equal rights under the law."

Page 5 of the Petition again refers to Federal rights to which Petitioner claims to be entitled and which were being denied to him:

> "It has already been mentioned that Petitioner believe s that he has been deprived unlawfully of his rights under the Nevada and United States Constitutions with respect to due process of law and equal justice under the law."

The Petition, page 5, also refers to a Federal statute existing to redress the deprivation of Federal rights and petitions the Nevada Supreme Court to grant the relief without the necessity for the use of the Federal statute:

> "With reference to Federal law, Petitioner refers to 28 United States Code, Section 1343(3) which allows Federal district courts to redress the deprivation of any right, privilege or immunity under color of any State law. Petitioner is confident that the Nevada Supreme Court will redress the obvious wrong done to Petitioner without the necessity for resort to the Federal Courts."

Additionally, another Federal statute is brought to the attention of the Nevada Supreme Court in the original Petition on Page 5 thereof, in the following manner: (Lines 16 to 27)

> "42 United States Code, 1983 allows suits to be brought for redress of parties injured as a result of the loss of rights, privileges or immunities secured by the Constitution under color of State law. Hopefully, Petitioner recognizes the learning and fairness of the present members of the Nevada Supreme Court and is confident that recourse to the Federal Courts will not be necessary. Petitioner is hopeful that it will be recognized that he has been the victim of invidious discrimination and that he has been denied the minimum standards of due process, now made clear by the decision of Vlandis v. Kline, supra."

Appellant, in the original Petition, under the heading of "RELIEF CLAIMED" urged the Nevada Supreme Court to either modify the Court Rules to allow Petitioner-Appellant to be admitted under Nevada Supreme Court Rule 72.5, inasmuch as Petitioner-Appellant is the Dean of the Institute of Advanced Law Study or to allow Petitioner "to take the next scheduled Nevada bar examination."

Starting on Page 5 of the Petition and concluding on Page 6, the wording is as follows:

> "RELIEF CLAIMED
> "Petitioner believes that he is clearly entitled to be admitted to the practice of law under Supreme Court Rule 72.5 or under a slight modification of that Rule which the Nevada Supreme Court has authority to do.
> Alternatively, Petitioner respectfully prays this Honorable Court, notwithstanding Supreme

Court Rules for the payment of an application fee, already paid by Petitioner several years ago or other qualification rules other than rules relating to investigation of character and ethical conduct, to issue an Order allowing Petitioner to take the next scheduled Nevada bar examination."

II - THE OXLEY STAVE CASE IS EASILY DISTINGUISHED FROM THE CASE AT BAR.

Appellee relies heavily upon the case of Oxley Stave Co. v. Butler County, 166 U.S. 648, 655 in support of its contention that federal questions were not raised sufficiently in the lower court.

The Oxley Stave Case, supra, can be easily distinguished from the case at bar. In Oxley, the Supreme Court found, in an opinion delivered by Mr. Justice Harlan, that there was not "specially set up a right or immunity under the 14th Amendment of the Constitution of the United States, forbidding a state to deprive any person of his property without due process of law."

While in the case at bar, there are numerous references to rights of the Appellant under the Federal Constitution, the Supreme Court held in the Oxley Case:

> "Looking into the record we do not find that any reference was made in the court of original jurisdiction to the Constitution of the United States. Nor can it be inferred from the opinion of the supreme court of Missouri that that court was informed by the contention of the parties that any Federal right, privilege, or immunity was intended to be asserted. For aught that appears the state court proceeded in its determination of the cause without any thought that it was expected to decide a Federal question."

It is clearly evident, in the case at bar, that the Nevada Supreme Court was aware that a Federal question relating to interpretation of the 14th Amendment was involved.

Should this Honorable Court have any doubt that the Nevada Supreme Court was unaware of the presentation to it of any Federal question, the Appellant herein, acting in proper person as a member of the Bar of the Supreme Court of the United States, does hereby make request for continuance of this cause so that a certificate may be obtained from the Nevada Supreme Court to clarify any ambiguity that may exist concerning this point of law. This Court, in Herb v. Pitcairn, 324 U. S. 117, 128 has indicated that such a step may be taken when there is need. Supreme Court Practice, Stern & Gressman, page 676.

Should the Nevada Supreme Court state that it did not consider any Federal rights, this Court could then refer the case back to the Nevada Supreme Court for consideration of the Federal questions.

The mere fact that the Nevada Supreme Court has remained silent on the question of any Federal rights, such silence is immaterial even where the state court is not explicit in overruling a timely challenge on federal grounds. Largent v. Texas, 318 U.S. 418.

III - THE PETITION FILED IN THE STATE COURT IS SPECIFIC AND PLAIN IN POINTING OUT TO THE STATE COURT THAT THE APPLICATION OF THE STATE STATUTE OR ITS EQUIVALENCY TO THE PARTICULAR CIRCUMSTANCES OF PETITIONER MAKES THE STATUTE VOID UNDER FEDERAL LAW.

This Honorable Court has already previously established that a State Supreme Court Order may possess sufficient legislative characteristics to support an appeal. In the case of Lathrop v. Donohue, 367 U.S. 820, an order establishing an integrated state bar was found to have such characteristics. There is no dispute, therefore, as to the case at bar, inasmuch as the pertinent Nevada Supreme Court Rules are in the nature of regulation of the legal profession and therefore have legislative characteristics.

The Petition makes it clear that the Petitioner was not seeking an erosion of the Nevada scheme for the admission of officers of the Court to practice before the courts of Nevada. He was merely pressing the point that he had high academic credentials and that he met all of the high standards established by the Nevada Supreme Court for officers of the Court except the one proviso for graduation from a law school approved by the A. B. A. at the time of graduation. The fact that his law school has since won ABA approval or the fact that his law school (University of Baltimore School of Law), at the time of his attendance, was on the approved list of law schools of the State of Maryland, or the fact that at the time of his attendance in law school in Maryland the State of Nevada had no ABA law school requirement for any applicant for admission to the Nevada Bar (then SupremeCourt Rule 4) and that at that time the State of Nevada had a rule allowing bar members of sister states to be admitted without examination upon a showing of three years of active practice, were all facts that should have been considered by the Nevada Supreme Court in favor of the Petitioner.

It should have been obvious to the Nevada Supreme Court that it is of questionable rationality to insist that a practitioner of many years of good standing at the Bars of two states must be conclusively incapable of meeting the

high standards of the State of Nevada for members of the Bar merely because the Petitioner attended a law school that did not meet ABA requirements for library facilities or for lecturing by full time law professors instead of by practicing lawyers and sitting judges. The Nevada Supreme Court, in its present scheme of admission of attorneys from other states, has no provision for any hearings to determine, for example, that Petitioner used the extensive law libraries of the Bar Library of Baltimore City, the Peabody Library of Baltimore and the public libraries of the City of Baltimore as well as the law library of the University of Baltimore for his research during his student days; nor is there any provision for consideration of any facts relating to the highly qualified attorneys and sitting and retired judges that comprised the faculty of the law school while the Petitioner was a student therein. Nor is there any provision for any consideration of law books written by the Petitioner, nor the fact that he has taught admiralty law at an ABA accredited law school, Loyola University School of Law at Los Angeles, nor the fact that he is Dean of the Institute of Advanced Law Study and has taught admiralty law throughout the United States, mainly to lawyer groups. Nor is there any provision for consideration of the fact that Appellant is a member in good standing of the State Bar of Michigan, is entitled to practice in the Bar of Maryland and before the United States Supreme Court and is a member of the American Bar Association, the American Judicature Society, the Federal Bar Association and the Association of Continuing Legal Education Administrators.

It is clear from the Petition filed by Appellant in the state court that he does not argue that anyone has an absolute right to practice a pro-

fession. He merely maintains that current practitioners should have an opportunity to demonstrate, by examination, their adequacy to meet the standards. Appellant has merely sought and still seeks to protect his "liberty" and "property" interests in his profession and an opportunity to rebut the statutory presumption of his incompetence.

IV - THE UNITED STATES SUPREME COURT HAS LONG DISFAVORED IRREBUTTABLE STATUTORY PRESUMPTIONS WITH IRRATIONAL RESULTS

Appellee cites Schware v. Board of Bar Examiners, 353 U.S. 232, 239 in support of its position that "a state can require high standards of qualification as a prerequisite to admission to practice."

Appellee, unfortunately, failed to read the entire sentence, which reads:

> "A State can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have a rational connection with the applicant's fitness or capacity to practice law."

Mr. Justice Black, in delivering the opinion of the Court in Schware, supra, said:

> "A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment."

Inasmuch as the Appellant herein attended a law school approved by the State of Maryland, was admitted to the Maryland Bar in 1943 after passing the Maryland bar examination and practiced law for 19 years in both Maryland and Michigan prior to applying for admission to the Nevada Bar, it lacks

rationality to inform such an applicant for admission that there exists in the State a law that presumes him to be incompetent to practice law and that this is an irrebuttable presumption that he will never be allowed to rebut.

The Appellee contends that "Nothing in Vlandis v. Kline (412 U.S. 441) affects Nevada's right to continue to require such qualification." (Referring to the requirement that in every instance of seeking admission to the bar the applicant must be a graduate of an ABA-accredited law school.)

Vlandis v. Kline, supra is only one of a long series of cases wherein the Supreme Court of the United States has corrected injustices. For example, in Berger v. Board of Psychologist Examiners, 521 F 2d 1062, decided October 28, 1975, the Court of Appeals of the District of Columbia Circuit, in an opinion by Circuit Judge MacKinnon, held:

> "The Supreme Court has long held irrebuttable statutory presumptions to be disfavored. (Cases cited) Recently the Court has struck down irrebuttable presumptions that unmarried fathers are unqualified to raise children, Stanley v. Illinois, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed. 551 (1972); that women more than four months pregnant cannot teach school, Cleveland Board v. Lafleur, 414 U.S. 632, 94 S. Ct. 791, 39 L. Ed. 2d 52 (1974); and that those who apply to the Connecticut State University system as non-residents can never become residents for the purpose of paying lower in-state tuition, Vlandis v. Kline, 412 U.S. 441, 446-53, 93 S. Ct. 2230, 37 L Ed. 2d 63 (1974). "(Other cases cited).

Justice Stewart, in Vlandis, supra, made some interesting commentparticularly applicable to the case at bar. He said:

> "The State's interest in administrative ease and certainty cannot, in and of itself, save the conclusive presumption from invalidity under the Due Process Clause where there are other reasonable and practicable means of establishing the pertinent facts on which the State's objective is premised." 412 U.S. at 451, 93 S. Ct. at 2236.

In Berger v. Examiners, supra, the U. S. Court of Appeals, relying on the Vlandis Case and many other cases following the Vlandis principle issued an order requiring the licensing examiners "to administer to appellant Berger an examination designed to determine whether his professional skill is commensurate with that of new psychogists being currently licensed under the Act."

Continuing, the decision held:

> "In so doing, we do not act as a legislature to add this requirement to the statute, but rather strike down as unconstitutional that part of the statute which requires an applicant to have an academic credential as well as a certain number of years experience in order to qualify to take a license examination. Only by this action can we remedy the constitutional defect of the statute as it is applied to Berger and to other psychologists without the requisite academic credentials but possibly possessed of the necessary skills."

V - A STATE LAW THAT IS NOT APPLIED EQUALLY TO ALL SHOULD BE STRUCK DOWN AS UNCONSTITUTIONAL

When a State law is applied in such manner as to be made applicable to certain individuals and not to others, such a law is clearly in violation of the Fourteenth Amendment and must be struck down.

Page 4 of the Petition, Lines 14 to 20, tell of two applicants for admission to the Nevada Bar who have not graduated from ABA-approved law schools and who were admitted to the Nevada bar examination and subsequently to the Nevada bar for the practice of law. In both cases, this was done with the full knowledge and approval of the Nevada Supreme Court.

In Barbier v. Connolly, 113 U.S. 27, the Court held, in a case involving equal protection of the laws guaranteed by the Fourteenth Amendment:

> "Class legislation, discriminating against some and favoring others, is prohibited, but legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the amendment."

In the case at bar, two other men, both now practicing law, were admitted to practice despite the fact that they had not graduated from ABA-approved law schools. One of them had never even been admitted to practice law in any other State and was totally without any legal experience, whereas Appellant had practiced law in both Maryland and Michigan before moving to Nevada and has been denied admission to the Nevada bar examination.

Are the words of the 14th Amendment meaningless? It is said that the people of the U.S.S.R. have beautiful guaranties of liberty written into their Constitution or equivalent documents but that the guaranties are never enforced.

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VI - APPELLEE MAKES THE POINT THAT OR CLAIM THAT THE QUESTIONS PRESENTED ARE "UNSUBSTANTIAL".

Appellant respectfully represents to this Honorable Court, in response to this contention, that the right of Appellant to earn his livelihood in his chosen profession, of which he has been a participant for almost thirty three (33) years is a substantial question.

The matter of a right to earn a livelihood is certainly not a frivolous matter and is of great importance and substance.

Furthermore, Appellant believes that the United States Supreme Court has never previously passed on the question of the right of a seasoned attorney, moving from one state to another, to be allowed to establish his competency as an attorney despite the existence of some arbitrary academic requirement that would seem to bar him from practice. Thus, it cannot be said that prior decisions of the Supreme Court leave no room for real controversy, as was pointed out in the case of Equitable Life Assurance Society v. Brown, 187 U.S. 308, 311.

In the Berger Case, supra, the opinion of the U. S. Court of Appeals dealt with a case of a professional practitioner without any meaningful grandfather rights. The Court applied the Vlandis principle and ordered an examination for the practitioner. In doing so, however, the Court commented:

> "The federal courts have apparently not considered the issue we confront in this case, but at least one state court has entertained a similar claim and has reached a virtually identical conclusion."

The question was apparently not explicitly foreclosed by prior decisions of the U. S. Supreme Court so as to leave no room for controversy.

CONCLUSION

Appellant respectfully suggests that the case at bar meets all of the requirements for the exercise of the appellate jurisdiction of this Honorable Court and that probable jurisdiction should be noted and the case placed on the hearing docket.

Respectfully submitted,

JOSEPH M. KADANS
Attorney for Appellant
in pro se

CERTIFICATE OF SERVICE

Joseph M. Kadans, a member of the Bar of the UnitedStates SupremeCourt, hereby certifies that three copies of the foregoing Brief were left at the office of Samuel S. Lionel, Esq., Attorney for Appellee, First National Bank Building, Las Vegas, Nevada on the 19th day of March, 1976.

JOSEPH M. KADANS